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Supreme Court, U.S.
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No.

In the
Supreme Court of the United States

ADAM N. STILLO and
FLORENCE F. STILLO,

Petitioners,

v.

STATE RETIREMENT SYSTEMS,
JUDGES' RETIREMENT SYSTEM OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

STANLEY H. JAKALA
Counsel of Record
3219 South Maple Avenue
Berwyn, Illinois 60402-2809
(708) 788-5733

Attorney for Petitioners

Midwest Law Printing Company/Photex — Chicago — (312) 321-0220

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QUESTIONS PRESENTED

1. Did the petitioner's monthly pension of $5,468.60 net and other attendant benefits, property right, entitle the petitioner to a pre-suspension hearing before those benefits could be suspended prior to the scheduling of a termination hearing of those benefits?

2. Should the pension benefits and other attendant benefits, property right, have been suspended or alternatively terminated prior to the exhaustion of the petitioner's remedies relative to a criminal conviction for which he was sentenced on July 11, 1994?

LIST OF ALL PARTIES

The caption of this petition lists as respondents all of the appellees in the proceeding in the Illinois Appellate Court, First District, Cook County, Illinois, and the Supreme Court of Illinois.

The petitioners herein are Adam N. Stillo and Florence F. Stillo, his wife.

Prior to being convicted by a federal grand jury sitting in the Northern District of Illinois, Seventh Circuit, for charges of racketeering and extortion conspiracy for which the petitioner, Adam N. Stillo, had been sentenced on July 11, 1994, Judge Stillo was receiving a monthly pension of $5,468.60 net and other attendant benefits, which included medical coverage for his wife, Florence F. Stillo.

Also, prior to being indicted for charges of racketeering and extortion conspiracy for which the petitioner, Adam N. Stillo, was sentenced on July 11, 1994, Judge Stillo had retired from the bench as a judge on August 11, 1988, six years before being indicted.

The petitioner is not a corporation; no disclosure of parent companies and subsidiaries pursuant to Rule 29.6 is required.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully requests this Court to issue a Writ of Certiorari to the Appellate Court of Illinois, First District, to review that Court's decision and opinion entered on May 21, 1999 (App. 1), with a subsequent denial of Petition for Leave to Appeal by the Illinois Supreme Court on December 1, 1999 (App. 21).

OPINIONS BELOW

On November 24, 1997, the Circuit Court of Cook County, Illinois, denied the plaintiffs' complaint for administrative review (App. 19).

On May 21, 1999, the Appellate Court of Illinois, First District, Sixth Division, affirmed the decision of the Circuit Court of Cook County, Illinois (App. 1).

On July 19, 1999, the Appellate Court of Illinois, First District, Sixth Division, denied the plaintiffs-appellants' petition for rehearing (App. 20).

On December 1, 1999, the Supreme Court of Illinois denied the petitioners' Petition for Leave to Appeal (App. 21).

STATEMENT OF JURISDICTION

1. The published opinion of the Illinois Appellate Court, First District, Sixth Division (App. 1-18), was entered on May 21, 1999. That opinion affirmed the circuit court's ruling (App. 19), which had affirmed the respondent's decision that petitioner's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution were not violated, even though petitioner was not afforded a pre-suspension hearing concerning his monthly pension of $5,468.60 net and other attendant benefits prior to suspension of those benefits, and those benefits were terminated after a termination hearing, prior to exhaustion of petitioner's remedies, relative to his criminal sentence of July 11, 1994, concerning his conviction for charges of racketeering and extortion conspiracy by the federal grand jury.

2. The Appellate Court denied a petition for rehearing on July 19, 1999 (App. 20).

3. The Illinois Supreme Court denied a petition for leave to appeal on December 1, 1999 (App. 21).

4. The Petition for Writ of Certiorari was filed less than 90 days from the denial of the Petition for Leave to Appeal by the Supreme Court of Illinois, said denial occurring on December 1, 1999.

5. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Amendment V to the Constitution of the United States

Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV to the Constitution of the United States

§1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

40 ILCS 5/18-163

§ 18-163. Felony conviction. None of the benefits herein provided shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his or her service as a judge.

Illinois Supreme Court Rule 761.
Conviction of Crime

(d) Hearing. Where an attorney has been convicted of a crime involving fraud or moral turpitude, a hearing shall be conducted before the Hearing Board to determine whether the crime warrants discipline, and, if so, the extent thereof.

(1) If the attorney has not appealed from the conviction, the Administrator shall file a complaint with the Hearing Board alleging the fact of the conviction.

(2) If the attorney has appealed from the conviction, the hearing shall be delayed until completion of the appellate process unless the attorney requests otherwise. If after the completion of the appellate process the conviction has not been reversed, the attorney shall notify the Administrator within 30 days of the mandate being filed in the trial court that the conviction was affirmed. Upon becoming aware that the conviction has been affirmed, the Administrator shall file a complaint with the Hearing board as described in (1) above.

STATEMENT OF THE CASE

On September 30, 1994, an administrative decision was received by the petitioner, which decision bore the date of September 28, 1994. (C2)

The petitioner desires judicial review of the final decision of the administrative agency's terminating Adam N. Stillo's monthly pension of $5,468.60 with the attendant benefits of life and medical insurance, and terminating Florence F. Stillo's vested interest as a primary beneficiary in Adam N. Stillo's pension and existing medical coverage. (C2)

Judicial review is sought for the reason that the decision is both contrary to law and contrary to the actual facts of the case, not limited to but including the following reasons: (C2)

Adam N. Stillo's monthly pension of $5,468.60, with the attendant benefits of life and medical insurance, and Florence F. Stillo's vested interest as a primary beneficiary in Adam N. Stillo's pension and existing medical coverage, were suspended without a hearing on August 1, 1994. (C3)

Suspending Adam N. Stillo's monthly pension of $5,468.60 net, with the accompanying benefits relating to Adam N. Stillo and Florence F. Stillo, without a hearing, violated the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution, which would have required notice and opportunity for a hearing, pursuant to *Goss v. Lopez*, 419 U.S. 565 (1975). (C3)

Although the respondent administrative agency provided the petitioner with a hearing on August 26, 1994, the hearing was only provided after the petitioner had filed a complaint for declaratory judgment with an agreed order providing for such a hearing, since the respondent had determined to terminate the benefit without a hearing on January 19, 1994. (C3)

The respondent relies upon *People ex rel. Grogan v. Lisinski*, 68 Ill. Dec. 854, 113 Ill.App.3d 276 (1st Dist. 5th Div. 1983), for the contention that it has the legal authority to terminate the petitioner's pension and accompanying benefits because the imposition of the sentence constituted a final judgment. (C4)

Respondent's reliance upon the *Grogan* decision is misplaced, since *People ex rel. Grogan v. Lisinski* concerned the removal of Lisinski from political office, and did not concern the extinguishment of a property right, as recognized in *Moore v. Board of Trustees*, 157 Ill.App.3d 158 (1987), and *Wendl v. Moline Police Pension Board*, 96 Ill.App.3d 482 (3d Dist. 1981). (C4)

The petitioner's position before the administrative agency was that Adam N. Stillo's appeal of the finding of guilty and imposition of sentence in the criminal proceedings stayed termination of that property right, pursuant to a legal principle that has been recognized by the Supreme Court of Illinois in its rule 761(D), governing suspensions and disbarments of attorneys. This rule provides that a hearing for disbarment is stayed until the appeal process has been completed regarding the conviction and sentencing of one in a criminal proceeding. (C4)

The principle enunciated in Supreme Court Rule 761, paragraph D, that an appeal stays a disbarment proceeding, incorporates due process as reflected in the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution, and to suspend or terminate Adam N. Stillo's pension, with its attendant benefits, with such suspension or termination impacting upon Florence F. Stillo's attendant benefits, violates the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution. (C4-5)

On August 29, 1988, Judges' Retirement System of Illinois correspondence indicated that Adam N. Stillo's cost of an annuity was $44,182.65. (C5)

The aforementioned annuity cost does not include the cost of survivor benefits of Florence F. Stillo, which information is found in respondent's record. (C5)

From 1988 through 1994, the petitioner, Adam N. Stillo, was paid $21,279.93 from the annuity cost of $44,182.65. (C5)

Subtracting $21,279.93 from $44,182.65 results in a net balance of $22,902.72 available for distribution to Adam N. Stillo. (C5)

Page one of the administrative agency's opinion indicates that Adam N. Stillo contributed $104,574.95 to the retirement system and has been repaid $21,279.93, with the difference being $83,938.22, which is the amount that would be due and owing Adam N. Stillo; Adam N. Stillo does not owe the Judges' Retirement System of Illinois the sum of $4,483.43. (C5)

REASONS FOR GRANTING THE WRIT

I.

THE PETITIONER WAS ENTITLED TO A PRE-SUSPENSION HEARING BEFORE THE PETITIONER'S PENSION BENEFITS WERE SUSPENDED.

In 1969, in *Sniadach v. Family Finance Corporation of Bay View*, 23 L.Ed.2d 349, 395 U.S. 337, 89 S.Ct. 1820 (1969), the United States Supreme Court was concerned with a garnishment action against defendant and her employer as garnishee. Defendant moved that garnishment proceedings be dismissed for failure to satisfy due process requirements of the Fourteenth Amendment. The county court upheld the state garnishment statute. On appeal, the Circuit Court, Milwaukee County, and Supreme Court of Wisconsin, 37 Wis.2d 163, 154 N.W.2d 259, affirmed. Defendant petitioned for writ of certiorari. The United States Supreme Court, Mr. Justice Douglas, held that absent notice and prior hearing Wisconsin prejudgment garnishment procedure in which summons is issued at request of creditor's lawyer and lawyer by serving garnishee sets in motion machinery whereby wages are frozen in interim before trial of main suit without any opportunity on part of wage earner to be heard or to tender any defense he might have, whether fraud or otherwise, violated fundamental principles of due process. Reversed.

In this case, the sole question is whether there has been a taking of property without a procedural due process that is required by the Fourteenth Amendment, the question of what constitutes "the right to be heard." (*Schroeder v. New York*, 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255 (1962)). Although the petitioner acknowl-

edges the fact that notice of termination hearing and termination hearing was afforded to him, nonetheless, the question before this Supreme Court of the United States is whether the interim suspending of a retirement monthly pension of $5,468.80 net, a property right, without a chance to be heard, violates the procedural due process clause of the Fourteenth Amendment.

Granted that the United States Supreme Court has analyzed due process, in some instances, as flexible due process, which the Illinois appellate court opinion adopted in rejecting the petitioner's claim that he was entitled to procedural due process prior to the suspending of his monthly pension and other attendant benefits (App. 9), the petitioner strongly suggests that flexible due process should not apply in this case for the reasons hereinafter stated.

For emphasis, before analyzing the appropriate Illinois Appellate and Supreme Court decisions, and the decisions of the United States Supreme Court, relative to the issue of whether the petitioner should have been afforded a pre-suspension hearing, it is the position of the petitioner, after review of the law, that it is obvious that there has been a blatant violation of due process rights under the Fifth and Fourteenth Amendments, in this matter, by suspending the petitioner's property right, a retirement monthly pension and other attendant benefits, without providing him with a procedural due process pre-suspension hearing.

In the Illinois Appellate Court opinion (App. 9-10), the Appellate Court cites numerous cases to support its position that flexible due process applies to the petitioner, by relying chiefly upon *Goldberg v. Kelly*, 397 U.S. 254, 25

L.Ed.2d 287, 90 S.Ct. 1011 (1970), and *Mathews v. Eldridge*, 424 U.S. 319, at 335, 47 L.Ed.2d at 33, 96 S.Ct. at 903 (1976).

Relative to *Goldberg v. Kelly*, that United States Supreme Court decision supports the petitioner's contention that he was entitled to a pre-suspension hearing as it concerned an extinguishing of a property right, which entitled the petitioner to a pre-suspension hearing.

As was noted in the *Goldberg v. Kelly* United States Supreme Court decision, welfare benefits are statutory benefits that require hearings.

It should be emphasized that the distinction between the petitioner herein and *Goldberg v. Kelly* is that the petitioner contributed his own funds to the Judges' Retirement System, which, in turn, utilized those funds and other governmental funds to pay the petitioner's monthly retirement pension of $5,468.60 net and other attendant benefits.

On the other hand, in *Goldberg v. Kelly*, the United States Supreme Court was concerned not with pension contributions paid by a pensioner's moneys, but payment of welfare benefits from taxpayer moneys, which the *Goldberg v. Kelly* United States Supreme Court determined as benefits constituting a property right, entitling the recipient to a hearing before those welfare benefits can be extinguished.

Consequently, if welfare benefits cannot be extinguished without a hearing because they are property rights, it is inconceivable to maintain that pension benefits, consisting of contributions by a recipient, in this instance of $104,574.95, can be extinguished without a pre-suspension hearing of those benefits.

At the same time, *Mathews v. Eldridge*, 424 U.S. 319 (1976), as relied upon by the Illinois Appellate Court, is clearly distinguishable from the facts of the petitioner.

At the outset, it should be noted that Eldridge did not exhaust his internal review procedures provided by the secretary of the Social Security Administration (SSA). See 20 CFR 404.910, 404.916, 404.940 (1975).

Because Eldridge had not exhausted his internal review procedures, the Secretary of the Social Security Administration moved to dismiss on the grounds that Eldridge's benefits had been terminated in accordance with valid administrative regulations and review procedures, and that Eldridge himself failed to exhaust the remedies of review within the SSA.

In these proceedings, the petitioner was not afforded the initial opportunity to have a pre-suspension hearing in order to invoke the application of the exhaustion of remedies by administrative review procedures to contest the decision to suspend his pension benefits without a hearing.

Also, *Mathews v. Eldridge* should not govern the denial of a pre-suspension hearing of pension benefits in this matter, pursuant to the analysis of *Gilbert v. Homar*, 116 S.Ct. 1807 (1997).

In *Gilbert v. Homar*, the Supreme Court of the United States has ruled that there can be a suspension of plaintiffs' property rights, such as payment of wages, without a notice and hearing requirement. At 126-127 of the *Gilbert v. Homar* Supreme Court decision, 138 L.Ed.2d 120 (1997), the United States Supreme Court addressed

the *Cleveland Board of Education v. Loudermill*, 470 U.S. 432, 84 L.Ed.2d 494, 105 S.Ct. 1487 (1985), decision.

In the *Loudermill* Supreme Court decision, the United States Supreme Court required that a tenured public employee, one who could be dismissed only for cause, was entitled to a limited hearing prior to his termination, to be followed by a more comprehensive termination hearing process.

With reference to the *Loudermill* position, it was noted that if government interests required immediate action because of a perception of a significant hazard in maintaining the employee on the job, then the employee could be suspended with pay.

But, at pages 127-128 of the *Gilbert v. Homar* United States Supreme Court decision, the United States Supreme Court has also ruled that, if the governmental employer perceives a hazard which requires immediate action, then that immediate action can generate a suspension without pay, since there is a flexibility of due process in that respect.

Applying that flexibility of due process, from the standpoint of *Mathews v. Eldridge*, 424 U.S. 319 (1976), as analyzed by the Supreme Court of the United States at 128 of the *Gilbert* decision, to the petitioner, the petitioner not only has a substantial interest that would require a hearing, but the petitioner was not a hazard, which would have required suspending his pension benefits without pay.

That determination of whether the petitioner has more than a minimal, but in fact a substantial, interest in receiving pension benefits after being convicted of taking

bribes as a judge should have been addressed in a pre-suspension hearing, which would have required evidence relating to the other two factors as stated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), as cited by *Gilbert v. Homar*, 138 L.Ed.2d 120 (1997), at 128; namely, the risk of erroneous deprivation and the compelling government interest at stake.

Because the petitioner was convicted and sentenced, that conviction and sentencing does not translate into a risk of erroneous deprivation being minuscule until the petitioner has exhausted his appellate process to reverse such a criminal conviction.

At the same time, although in *Gilbert v. Homar*, a United States Supreme Court decision, 116 S.Ct. 1807 (1997), there is a reference to compelling governmental interest that could be the basis that a judiciary must be free from corruption, the *Gilbert v. Homar* United States Supreme Court decision can be factually distinguished from the proceedings in this matter when, at page 127 of the *Gilbert v. Homar* Supreme Court decision, the court concerned itself with a governmental employer perception of a hazard in leaving an employee on the job.

Here, the petitioner, Adam N. Stillo was no longer a judge, and was not on the job. In effect, Adam N. Stillo was a hazard to no one.

For purposes of emphasis, the courts consistently have held that some form of hearing is required before an individual is finally deprived of a property right interest as case law hereinafter holds. *Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974). See, e.g., *Phillips v. Commissioner*, 283 U.S. 589, 596-597 (1931). See also *Dent v.*

West Virginia, 129 U.S. 114, 124-125 (1889). The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). See *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). Requirements of due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount.

Relative to the above analysis of United States Supreme Court cases, the petitioner refers this United States Supreme Court to Illinois decisions to support his contention that he was entitled to a pre-suspension hearing, before the suspending of his monthly pension benefit and other related benefits.

In 1981, in *Wendl v. Moline Police Pension Board*, 96 Ill.App.3d 482 (3d Dist. 1981), at pages 486-487, the court held that police officers receiving disability pensions retained a property right in such pensions, which right could not be terminated without meaningful notice and a meaningful opportunity to be heard.

That the property right cannot be terminated without notice and a hearing process has been recognized in federal court decisions; specifically, *Begg v. Moffitt*, 555 F.Supp. 1344 (1983), at 1348, espoused the legal theory

that a legitimate claim of entitlement cannot be lost except for cause, which requires a hearing process.

Likewise, in *Moore v. Board of Trustees,* 157 Ill.App.3d 158 (1st Dist. 1st Div. 1987), the Appellate Court ruled that Thomas Moore, a Metropolitan Sanitary District employee who was receiving monthly pension annuity benefits based upon completion of ten years of service with the Metropolitan Sanitary District, could not have his pension benefit terminated without a hearing, upon a finding of guilt on August 3, 1985, of a commission of a felony in connection with his employment.

Specifically, at pages 165-166, the Appellate Court determined that Mr. Moore's pension benefit could not be discontinued without notice and an opportunity to be heard.

Because of the analysis in *Moore v. Board of Trustees,* 157 Ill.App.3d 158 (1st Dist. 1st Div. 1987), a judge's pension with its attendant benefits cannot be suspended without notice, without an opportunity to be heard, and without a hearing, requiring the Retirement System to produce evidence for the suspension of such a pension with its attendant benefits.

Concerning the legal concepts as expressed in *Wendl v. Moline Police Pension Board*, 51 Ill. Dec. 949, 96 Ill.App. 3d 482, 421 N.E.2d 584 (3d Dist. 1981), *Begg v. Moffitt,* 555 F.Supp. 1344 (1983), and *Moore v. Board of Trustees*, 109 Ill. Dec. 466, 157 Ill.App.3d 158, 510 N.E.2d 87 (1st Dist. 1st Div. 1987), a property right, such as a pension property right, cannot be terminated without notice and a hearing.

Admittedly, none of the above cited Illinois decisions concerned notice of due process and hearings for suspension of pension property rights, there are Illinois decisions that concern such due process notice and hearing for suspensions of not only property rights, but privileges.

In *People v. Gerke*, 123 Ill.2d 85 (1988), at page 91, the Illinois Supreme Court observed that a summary suspension did not become effective until 46 days following the date of notification of a suspension.

Relating to the notification of the commencement of the suspension, the offender affected by the suspension has 30 days, from the receipt of notification of suspension, commencing on the 46th day, to request a hearing.

Likewise, in *People v. Esposito,* 121 Ill.2d 491 (1988), at 496-497, the summary suspension of driving privileges concerned the same statutory requirements as found in *People v. Gerke*, as analyzed by the plaintiffs-petitioners herein; namely, summary suspension being delayed until a certain date following a notice of a summary suspension, which notice provided for a request for a hearing within a certain period prior to the commencement of the summary suspension.

As was noted in the *Esposito* Supreme Court opinion, at 495, the provisions of summary suspension concern "driving privileges and the issuance of judicial driving permits." (Emphasis supplied.)

In contrast, in *Morgan v. Illinois Racing Board*, 155 Ill.App.3d 611 (3d Dist. 1987), in examining the Illinois Racing Act of 1975 (Ill. Rev. Stat. 1985, ch. 8, par. 37-1 *et seq.*), the Illinois Supreme Court determined that the

Illinois Racing Act had created a property right relating to possessing an Illinois horse racing license, requiring the board to hold a hearing within seven days after a request is made for such a hearing, 615 of the *Morgan* Illinois Supreme Court opinion.

As analyzed in *People v. Gerke* and *People v. Esposito*, in those decisions the parties involved had an opportunity to request a hearing after receiving notice that a suspension would not occur until some time later.

Consistent with the Illinois Supreme Court analysis as found in *People v. Gerke* and *People v. Esposito*, which related to driving privileges, not property rights, that approach of those two Illinois Supreme Court decisions was adopted by the *Morgan v. Illinois Racing Board* Supreme Court, which held that the suspension of an occupational license, a property right, required notice of such a suspension, with the suspended licensee being provided with the right to demand a hearing within five days, and with the board holding such a hearing within seven days.

Certainly, the concepts of due process espoused by statutory law in *People v. Gerke*, *People v. Esposito*, and *Morgan v. Illinois Racing Board*, are embodied in the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution, and those due process rights can be extended to suspension hearings as they are to termination hearings.

Because of the petitioner's analysis in this petition for writ of certiorari, contrary to the analysis in the Appellate Court opinion, for purposes of emphasis, the notice for the scheduled termination of the benefits hearing did

not refer to the suspension of those pension benefits, which suspension occurred prior to the issuance of the notice for the termination hearing.

Although the Appellate Court has determined that the pension benefits were suspended only for the month of August, 1994, pending the outcome of the August 26, 1994, termination hearing of the pension benefits, with the result that the loss of those benefits was considered minimal, nevertheless, it is the contention of the petitioner that the suspension of the benefits for one month was substantial, not minimal, adversely impacting on the financial needs of the petitioner to support himself and his wife for that given month.

Without question, the private stake of the petitioner herein involved property that was derived from the petitioner's contribution to the judges' retirement pension fund, which contributions were based upon compensation for services rendered to the government by the petitioner.

As a consequence, the petitioner's property interest should be considered similarly to wages, as "specialized type of property presenting distinct problems in our economic system," citing *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 340, 89 S.Ct. 1820, 1822, 23 L.Ed.2d 349 (1969), which required a hearing prior to extinguishing the receipt of wages.

Because the petitioner's private interest at stake was a substantial one, as it adversely impacted on his financial needs to support himself and his wife during the month that he had lost his pension benefits, the petitioner was entitled to a pre-suspension hearing.

Further, at App. 10, the Appellate Court expressed the view that there was no risk of erroneous deprivation of petitioner's benefits, as the procedure followed by the Judges' Retirement System did not require additional procedural safeguards, since the petitioner received a termination hearing notice on July 26, 1994, with the result that there was no risk of erroneous deprivation of the petitioner's benefits.

The petitioner disagrees with the aforementioned analysis concerning the Appellate Court's view of no risk of erroneous deprivation, because of the adverse impact on his financial needs to support himself and his wife during the month that they had lost his pension benefits.

In addition, contrary to the Illinois Appellate Court opinion, relative to the overriding governmental and public interest from the standpoint of a financial burden, there was no financial burden to provide a pre-suspension hearing, and there was no financial burden to pay the petitioner's pension, as he contributed his own funds to the Judges' Retirement System for services that he had rendered as a judge.

II.

THE PETITIONER'S PENSION BENEFITS COULD NOT BE TERMINATED PRIOR TO THE EXHAUSTION OF PETITIONER ADAM N. STILLO'S APPELLATE REMEDIES RELATING TO HIS CRIMINAL CONVICTION.

In the Appellate Court's opinion (App. 17), the Court asserts "We find that the language of section 18-163 does not support expanding the coverage of the reasoning used in Rule 761."

Further, on page 17 of its opinion, the Appellate Court holds: "If we were to apply the procedures set forth in Rule 761, we would nullify the plain language of section 18-163 and call into question the supreme court's well-reasoned decision in *Keenan*. Such drastic action is not warranted."

But in reviewing *People ex rel. Keenan v. McGuane*, 13 Ill.2d 520 (1958), the Illinois Supreme Court did not discuss as fully as has the Appellate Court herein the concept of including the exhaustion of remedies before the termination of pension benefits.

On page 537 of the *Keenan* Supreme Court opinion, the Supreme Court merely stated: "We find no merit in petitioner's contention that pendency of his appeal stays the finality of his conviction and thereby holds in abeyance a vacancy in the office of Cook County assessor."

In this instance, the Appellate Court did address the petitioner's contention that Rule 761 should be embodied in the concept of staying a final judgment, which Rule 761 concept was not raised and therefore could not be considered by the *Keenan* Supreme Court.

However, contrary to the appellate court's view of *Levine v. Kling*, 123 F.3d 580 (7th Cir. 1990), in footnote 3, on page 17 of the Illinois Appellate Court opinion, that the *Levine* opinion merely stands for the conclusion that "had Stillo had his conviction reversed by the court of appeals, he could have had his benefits restored," from the viewpoint of the petitioner, the *Levine* court considered the exhaustion of remedies as enabling the filing of a new malpractice suit by staying the statute of limitations until exhaustion of appellate remedies had occurred.

Although the petitioner acknowledges that the Illinois appellate court's opinion analyzing the *Levine v. Kling* Seventh Circuit decision stated that the exhaustion of remedies in staying the application of the statute of limitations required that the malpractice filing would have to be based upon a reversal of a criminal conviction, nevertheless, the significance of the *Levine* appellate court decision of the Seventh Circuit is that the exhaustion of remedies protects the criminal defendant from the finality of a criminal judgment that may be insupportable either by evidence or fairness of trial.

Based upon the above observation, it is the contention of the petitioner that the Illinois Supreme Court Rule 761(d)(2) stays the revocation of an attorney's license based upon a criminal conviction until there is a determination if the finality of a criminal conviction is supported by evidence and fairness.

Under Rule 761(d)(2), Adam N. Stillo could not have lost his license to practice law until he had exhausted his Appellate remedies; upon exhaustion of those Appellate remedies, then the ARDC could institute disciplinary proceedings for removal of Adam N. Stillo from the roll of attorneys of Illinois, which removal from the roll of attorneys of Illinois had to be sanctioned by the Supreme Court of Illinois.

It should be noted with much significance that Adam N. Stillo retired as judge on August 11, 1988, and was not removed as judge because of his federal conviction.

After retiring as judge, petitioner's law license could not be permanently extinguished, disbarment, until he

had exhausted his remedies of appeal, pursuant to Illinois Supreme Court Rule 761(d)(2).

Nonetheless, in its opinion, the Appellate Court, at App. 17, asserts that it would not extend the Illinois Supreme Court Rule 761(d)(2) concept, exhaustion of remedies before disbarment of an attorney, to staying the suspending or terminating of pension benefits until such an exhaustion of remedies had occurred, by stating "such drastic action is not warranted."

But it is the contention of the petitioner that such drastic action is warranted on the basis of the Fifth and Fourteenth Amendments to the United States Constitution, which provide that no person shall be deprived of property without due process, and that due process does include the exhaustion of remedies principle as adopted by Illinois Supreme Court Rule 761(d)(2), particularly when the deprivation of property concerns a pension property right consisting of money contributions by the recipient.

Certainly, revoking an attorney's license is an important governmental interest, but Illinois Supreme Court Rule 761(d)(2) recognizes that that governmental interest is less paramount than the doctrine of the exhaustion of remedies, when Illinois Supreme Court Rule 761(d)(2) provides for an exhaustion of remedies prior to the revocation of an attorney's license, which, in effect, recognizes that there is an exhaustion of remedies concept embodied in the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution.

Therefore, in these proceedings, the petitioner should not have had his pension terminated without the application of the exhaustion of remedies principle, as that principle is so paramount that it supersedes any governmental interest that would override the application of the exhaustion of remedies concept.

CONCLUSION

For the above-stated reasons, this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

STANLEY H. JAKALA*
Counsel of Record
3219 South Maple Avenue
Berwyn, Illinois 60402-2809
(708) 788-5733

Attorney for Petitioners

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